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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,290	07/21/2003	Lawrence M. Janesky	257-011175-US(PAR)	7389
2512	7590	11/03/2004	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			NGUYEN, CHI Q	
		ART UNIT		PAPER NUMBER
				3635

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/624,290	JANESKY, LAWRENCE M. 	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chi Q Nguyen	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 July 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "11" has been used to designate both "underside" and "concrete floor". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fan must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: The applicant is advised to insert "Brief Description of the" prior "Drawings", in line 18.

The disclosure is objected to because in line 3, page 9, the detailed description for figure 7, however there is no such figure 7 in the drawings.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitations in claims 6, and 13-18 not describe in the specification.

### ***Claim Objections***

Claims 2-18 are objected to because of the following informalities: the claimed preamble is inconsistent with the independent claim 1. Appropriate correction is required.

Claim 1 is objected to because the cited limitation "the undersurface" does not have antecedent basis.

Claims 4 and 5 are objected to because it's not clear that a "complementary edge means" cited in claim 4 same as "complementary engagement means" cited in claim 5? Clarification is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because the phrase "can be" renders claims indefinite since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Yeh (US 5,323,575).

In regard claim 1, Yeh discloses tile and mounting mat assembly comprising a plurality of strong, water-resistant floor tiles 1, which have a solid planar upper surface

and can be abutted with each other to form a water-impervious floor covering over a floor. The tiles 1 having a network or grid work 2 of spaced and raised water-resistant studs 33 projecting from undersurface of the mounting mat 2 are made of a flexible material such as rubber (see figs. 1-2). In regard claims 8-10, Yeh teaches the network or grid work 2 having a plurality of thermal air gap space 29 provides a thermal break between the surface of the concrete floor and the upper surface of the tile, and the air gap space 29 are vented by a plurality of openings 111.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 5-7, and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeh (US 5,323,575).

In regard claims 2-4, 6, Yeh teaches the structural elements for the floor tiles as stated, which including the mat or grid work having integral studs 33, and complementary edge means 66, 67, for engaging each other when the tiles abutted. However, Yeh does not teach specifically the water-resistant floor tiles are molded with the studs. Since the method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. In regard claim 5, Yeh teaches the complementary edge means 66, 67 having

projection known as tongue 67A, 67B, and grooves forming by two legs 66a, 66b. In regard claim 7, Yeh teaches the structural elements for the floor tiles as stated. Yeh does not teach expressly the floor tile having a thickness of 5/6" to 1 ½". It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have a specific thickness for the floor tile, since it has been held to be within the general skill of a worker in art to select a thinner or thicker floor tiles on the basis of its suitability for the intended use as a matter of obvious design choice. In regard claims 11-12, Yeh teaches the structural elements for the floor tile except for the air gap space is vented by means of a fan. Since neither the applicant's specification nor drawings disclose a fan, examiner considers this would have been obvious to have a conventional fan to blow through air gap opening for quicker water evaporation. In regard claims 13-18, Yeh teaches the structural elements for the floor tile as discussed including a plurality of tiles attached upon the mounting mat 2. However, Yeh does specifically teach the tiles' upper surface having a decorative finish, carpeting, and linoleum preattached. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a decorative upper surface tile. The motivation for doing would have been to provide the tiles aesthetically pleasing surface.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bertonlini (US 6,467,224) teaches decking tile.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-

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1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.

  
CQN

11/1/04



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600